

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

DONTE JAMAL MCCLELLON

Defendant.

NO. 2:22-cr-00073-LK

**GOVERNMENT’S PRE-HEARING  
BRIEF**

Defendant Donte McClellon failed to appear for a hearing on December 28, failed to seek mental health counseling, and traveled outside the district without permission, all in violation of his appearance bond. McClellon told the Court he was in the hospital, but the Government’s evidence—including flight records and email pings—clearly shows that he was in New York. He likely has been living in New York for much of his pretrial supervision, not at home in Seattle with his mother as he promised the Court he would. McClellon’s persistent disregard for this Court’s orders and willingness to lie to cover his tracks make him a serious flight risk. His bond should be revoked, and he should be remanded to custody pending trial.

An evidentiary hearing on McClellon’s bond violations is scheduled for Friday, February 17, 2023, at 1 p.m. before the Honorable Michelle L. Peterson. The government

1 anticipates calling two witnesses. Special Agent Armando Ramirez III, Federal Bureau of  
2 Investigation, will sit at counsel table. The government intends to file its exhibit list and  
3 witness list on February 15, 2023.

#### 4 **I. BACKGROUND**

5 Defendant Donte McClellon obtained three Payment Protection Program (“PPP”)  
6 loans worth more than \$500,000 under false pretenses. McClellon is the sole listed owner  
7 and manager of three Washington-based LLCs: Frostlake LLC, Cannonlake LLC, and  
8 Skylake LLC. He sought a PPP loan on behalf of each company in the early days of the  
9 COVID-19 pandemic. He claimed in loan applications that each company had monthly  
10 payroll expenses and employees for whom it paid payroll taxes. McClellon submitted  
11 supporting documents with the applications, namely, IRS Form 941s, IRS Schedule Cs,  
12 and bank documents. McClellon’s PPP applications and the forms he submitted with them  
13 were false—each of McClellon’s entities was a sham with no payroll, no employees, and  
14 no business operations. A grand jury indicted McClellon for three counts of bank fraud (18  
15 U.S.C. § 1344). In December 2022, the grand jury returned a superseding indictment  
16 charging three counts of wire fraud and two counts of bank fraud. Dkt. No. ¶ 62. Trial is  
17 set for March 6, 2023 before Judge King.

18 McClellon was detained early in the case after he lied to pretrial services about his  
19 financial accounts and aliases. McClellon claimed in an interview with pretrial services  
20 that he had only one financial account that was frozen by the government. *See* Dkt. 18, at  
21 2 (Gov’t Det. Mem.). The government notified defense that McClellon had at least four  
22 active accounts of which the government was aware, but McClellon still refused to provide  
23 accurate information. *Id.* McClellon also failed to notify pretrial services that he had an  
24 alternate identify—Donte Harrington—and two sets of passports. *Id.* at 4.

25 The Court reopened detention on defense’s motion in July 2022 and ultimately  
26 released McClellon to the third-party custodianship of his mother under conditions. In  
27

1 particular, McClellon's bond requires him to appear in court for all hearings in the case,  
2 undergo a mental health evaluation, and provide pretrial services requested financial  
3 information, among other obligations. Dkt. No. 39. McClellon signed his appearance bond,  
4 *see id.*, and the Court reviewed the conditions in detail with McClellon at the hearing. At  
5 the July 29, 2022 detention hearing, this Court explained "Your travel will be restricted to  
6 the Western District of Washington. . . . I am also directing that you maintain residence at  
7 your mother's house. You cannot leave her house or move anywhere else without letting  
8 Pretrial Services know, and you have to get approval from pretrial Services to leave your  
9 mother's house." [USA-00008596, at 1–2 & 19–24] This Court also reminded McClellon  
10 that his bond required him to "undergo some mental health and psychological evaluation  
11 and then I'm going to order that you follow up on any treatment recommendation including  
12 takin medication if that's prescribed to you." *Id.* at 1–5.

13 Despite these warnings, McClellon failed to appear for two hearings in December  
14 2022, leading the Court to issue a bench warrant on December 28, 2022. Counsel for the  
15 government waited more than one week for McClellon to resurface and explain his non-  
16 appearance. When that did not happen, the government requested the Court vacate the  
17 February 6 trial date so the government could release its out-of-town witnesses.

18 Meanwhile, the government set to work finding McClellon. Records from Google  
19 showed that McClellon's known email addresses communicated with the Google server  
20 from an IP address in New York on January 9 and January 25, 2023. Verizon confirmed  
21 the IP address was registered to McClellon at his New York apartment. Law enforcement  
22 spoke with McClellon's apartment manager, who said staff had seen him in the apartment  
23 building in the past few months, his apartment appeared occupied, and staff heard his voice  
24 when calling up food deliveries as recently as January 25, 2023. The government later  
25 obtained flight records from Delta showing that McClellon flew from John F. Kennedy  
26 airport in New York to SeaTac airport on January 30, 2023.

## II. VIOLATIONS BEFORE THE COURT

There are three bond violations currently before the Court. Violation one alleges McClellon failed to appear for a hearing on December 28, 2022 in violation of a standard condition of supervision. Violation two alleges that McClellon left the Western District of Washington without the permission of pretrial services, in violation of a special condition of supervision. Violation three alleges that McClellon failed to obtain a mental health evaluation and provide proof to pretrial services, in violation of a special condition.

McClellon has denied all violations, and an evidentiary hearing is scheduled before your honor on February 17, 2023.

## III. LAW ON BOND REVOCATION

18 U.S.C. § 3148 governs sanctions for a violation of a release condition and sets the standard for the revocation hearing. A person who has been released pretrial “and who violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.” 18 U.S.C. § 3148(a). The government must show by “clear and convincing evidence that the person that the person has violated any other conditions of release.” *Id.* § 3148(b)(1). The Court *must* order the person detained if it finds that “there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community,” or “the person is unlikely to abide by any condition or combination of conditions of release.” *Id.* § 3148(b)(2).

## IV. THE GOVERNMENT’S EVIDENCE

The government will present the following clear and convincing evidence that McClellon violated the terms of his appearance bond in the manner alleged by pretrial services:

- 1 • McClellon failed to appear for a hearing in front of your honor on December  
2 28, 2022. This Court convened the hearing and made a record that McClellon  
3 was not present.
- 4 • Pretrial services officer Michael Munsterman reminded McClellon multiple  
5 times to seek a mental health evaluation, including by text message on  
6 December 9, 2022. As far as Officer Munsterman is aware, McClellon never  
7 obtained the required evaluation.
- 8 • McClellon also left the district in violation of his pretrial bond. Records from  
9 Delta Airlines show that McClellon flew from JFK airport in New York to  
10 SeaTac airport on January 30, 2023, arriving just in time to turn himself in  
11 to this Court on January 31, 2023.
- 12 • The same Delta records suggest that McClellon has been living primarily in  
13 New York. He flew from JFK to SeaTac on October 25, 2022, arriving just  
14 in time to meet with Officer Munsterman for a home visit in Seattle. He flew  
15 back to New York that evening. He flew from JFK from SeaTac again on  
16 November 20, 2023 and back to JFK on November 21, 2022.
- 17 • The government obtained records from Google about Internet Protocol (IP)  
18 addresses used to log on to McClellon's known email address,  
19 djmcclellon@gmail.com. Those records show that someone—presumably  
20 McClellon—logged into djmcclellon@gmail.com on January 9, 2023 and  
21 January 25, 2023 in the state of New York from the same static IP address.
- 22 • Records obtained from Verizon confirm the IP address was registered to  
23 “Donte Mcclellon” at McClellon's New York apartment, with email address  
24 djmcclellon@gmail.com.
- 25 • Law enforcement interviewed the property manager at McClellon's New  
26 York apartment building, ARO NYC, and learned that his apartment has not  
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1           been rented out to another party. The property manager last saw McClellon  
2           at the building about one or two months ago, and ARO staff informed law  
3           enforcement that McClellon received food deliveries to his apartment in  
4           January 2023.

- 5           • ARO staff knocked on McClellon's apartment door on January 25, 2023, but  
6           there was no answer. Staff attempted a welfare check and discovered the  
7           security latch was engaged from the inside and the lights were on, suggesting  
8           someone was in the apartment.
- 9           • Later that day, McClellon received a food delivery in his name to his New  
10          York apartment. ARO staff called up to his apartment to inform him of the  
11          delivery, and the staff member heard McClellon's voice.
- 12          • McClellon received mail at his New York apartment in his name as recently  
13          as last week, namely, a FedEx package from a New York-based law firm.
- 14          • Agents surveilled McClellon's Seattle residence on January 9, 6, and 5 to  
15          ascertain his whereabouts. They did not see him or any sign that he was  
16          present at the house.
- 17          • McClellon did not obtain permission from pretrial services to leave the  
18          district between October 2022 and January 2023.

19          This evidence clearly shows that McClellon left the district without permission at  
20          minimum in October, November, and January. The evidence also shows that he failed to  
21          attend the December 28 hearing and failed to seek a mental health evaluation, all in  
22          violation of his pretrial bond. That bond should be revoked.

## 23                   **V.      MCCLELLON SHOULD BE DETAINED**

24          The Court must order McClellon detained pending trial if it finds "there is no  
25          condition or combination of conditions of release that will assure that the person will not  
26          flee or pose a danger to the safety of any other person or the community," or "the person  
27

1 is unlikely to abide by any condition or combination of conditions of release.” *Id.*  
2 § 3148(b)(2). Both circumstances apply here.

3 First, McClellon is a serious flight risk, and no conditions or combination of  
4 conditions will assure his presence. All evidence indicates McClellon has been living in  
5 New York for the better part of his pretrial supervision, not at his mother’s home in Seattle  
6 as he promised the Court on July 29. This is a serious breach of trust and indicates an  
7 unwillingness to abide by the Court’s orders. Simply put: McClellon already fled once, and  
8 there’s every reason to believe he’ll do so again. He also went to great lengths to avoid  
9 detection by flying from New York to Seattle to meet with his pretrial services officer for  
10 a home visit on October 25, suggesting knowledge of guilt.

11 Second, McClellon is unlikely to abide by any condition or combination of  
12 conditions. Even before McClellon absconded, his behavior on pretrial supervision shows  
13 he should be detained pending trial. Probation Officer Mike Munsterman wrote in a  
14 December 9, 2022 status report that McClellon’s “adjustment to supervision has been  
15 challenging at times,” and report suggests McClellon simply does not engage with pretrial  
16 services. For example, McClellon insisted on signing routine intake paperwork “under  
17 duress,” and he routinely fails to respond to correspondence from his probation officer.  
18 McClellon has refused to communicate directly with his probation officer, insisting that  
19 defense counsel must be involved in most conversations. When pretrial finally scheduled  
20 a home visit for October 2022 (several months after he was ordered released), McClellon  
21 was unable to substantiate claims that he was working as a photographer. McClellon was  
22 released on the condition that he would participate in pretrial supervision and comply with  
23 the conditions of his bond. He has wholly failed to do both. This, coupled with his flight to  
24 New York, confirms he cannot be on pretrial supervision. Indeed, this Court previously  
25 noted that “in order for the relationship to work on the outside if you were to be released,  
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1 there has to be trust between you and your Pretrial Services officer.” Dkt. No. 30-1, at  
 2 16:19–20.

3 Finally, McClellon is charged with stealing more than half a million dollars from  
 4 financial institutions under false pretenses. Discovery in this case is rife with instances  
 5 where McClellon lied and falsified documents to get what he wanted. Given this history,  
 6 the Court should not rely on McClellon’s assertions that he has been in the hospital, and it  
 7 should view any paperwork provided by McClellon with skepticism.

## 8 VI. CONCLUSION

9 McClellon’s recent flight from supervision confirms that he presents a serious flight  
 10 risk in the future. And his conduct on pretrial supervision confirms there is no condition or  
 11 combination of conditions that will reasonably assure his appearance. *See* 18 U.S.C.  
 12 § 3142(e). His bond should be revoked, and he should be detained pending trial.

13  
 14 DATED this 10th day of February, 2023.

15  
 16 Respectfully submitted,

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19  
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